

EXHIBIT E

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 Case No. 1:23-cv-2662

5 -----x
6 JOAN HARVEY,

7 Plaintiff,

8 - against -

9 DELTA AIR LINES, INC.,

10 Defendant.
11 -----x

12
13 November 27, 2023

14 11:02 a.m.

15 Deposition of Defendant, by DAVID
16 GILMARTIN, taken by the Plaintiff,
17 pursuant to Notice, held via Zoom, before
18 Tammy O'Berg, a Shorthand Reporter and
19 Notary Public of the State of New York.
20
21
22
23
24
25

1 DAVID GILMARTIN

2 the policy for addressing it?

3 A. They would need to be contacted,
4 and if they are drinking within eight
5 hours, they would be removed from their
6 assignment.

7 Q. Are they automatically removed?

8 A. Automatically.

9 We do follow up to see, you
10 know, what witnesses there were or how,
11 you know, it was proven that they were
12 drinking within eight hours.

13 Q. Isn't it true that the FAA
14 regulations require that they get tested?

15 A. No.

16 MR. FLEMING: Object to form.

17 Q. How do you know that's not
18 required?

19 A. Because it's the policy.

20 Q. Which policy?

21 A. Delta's Alcohol and Drug Misuse
22 Prevention Program.

23 Q. Can you be more specific?

24 A. They cannot drink or consume
25 alcohol within eight hours of their shift

1 DAVID GILMARTIN

2 suspicion is not enough. We would conduct
3 an investigation, and if an investigation
4 revealed that they were drinking within
5 eight hours, that would be something that
6 would be -- result in a suspension and
7 termination.

8 If someone's drinking within
9 eight hours or on board the airplane, they
10 are not eligible for anything less than a
11 termination; whereas if you have a
12 positive test for a first time, you could
13 potentially have conditional
14 reinstatement.

15 Q. So what would you -- so you're
16 saying if someone is suspected of alcohol
17 consumption and you determine based on
18 their statements and other witnesses'
19 statements that they have consumed
20 alcohol, they are automatically
21 terminated?

22 MR. FLEMING: Objection. It's
23 not what he testified to.

24 A. If I could have that question
25 repeated, please.

1 DAVID GILMARTIN - CONFIDENTIAL

2 MS. SELIGER: I think that's the
3 end of confidential portion.

4 (End of confidential portion of
5 the transcript.)

6 Q. Do you know why Joan Harvey was
7 fired?

8 A. She consumed alcohol within
9 eight hours of her departure out of Accra.

10 Q. When were you first informed
11 that someone had accused Joan Harvey of
12 consuming alcohol within eight hours of
13 her shift?

14 A. It was the same day that it
15 happened. Received a call from a crew
16 member in Accra with a concern.

17 Q. Do you remember who that was?

18 A. I recall it being a Flight
19 Attendant Judith Passman, as well as a
20 Captain Pete Corrao.

21 Q. Did they contact you together?

22 A. First Judith reached out and
23 then Peter joined later.

24 Q. What did Judith tell you?

25 A. She was concerned that a flight

1 DAVID GILMARTIN

2 attendant on her crew, her service leader,
3 was drinking alcohol within eight hours of
4 pickup by the pool.

5 Q. Did she tell you anything else?

6 A. She just mentioned that she was
7 aware the captain was out there, as well
8 as another flight attendant.

9 Q. And anything else?

10 A. That's all I recall.

11 Q. What did the captain tell you?

12 A. That he spoke with Miss Joan
13 Harvey, and that she told him she only had
14 a couple of sips of the beer.

15 Q. Anything else?

16 A. That's the most significant part
17 that I remember.

18 Q. Was Miss Passman an eyewitness
19 to Joan drinking an alcoholic beverage?

20 A. No.

21 Q. Did you ask her if she did
22 anything to figure out if the captain's
23 allegations were true?

24 A. No, and that wouldn't be her
25 job.

1 DAVID GILMARTIN

2 consuming alcohol or beer within eight
3 hours of pickup, and that she told the
4 captain that she'd had a few sips.

5 Q. Did you tell him anything else?

6 A. Not that I recall.

7 Q. And then did you call Joan
8 Harvey next?

9 A. Yes.

10 Q. And was Mr. Ramos on the phone?

11 A. Yes.

12 Q. Did Miss Harvey know that
13 Mr. Ramos was on the phone?

14 A. Yes.

15 Q. Actually, I just would like to
16 back up for a minute.

17 What is Mr. Ramos's title?

18 A. He's an OCC manager, Operational
19 Control Center, OCC manager.

20 Q. And what his role?

21 A. The OCC managers staff a hotline
22 where flight attendants around the world
23 can call about any operational issues, if
24 they're sick or, you know, whatever
25 situation has happened, if there's any

1 DAVID GILMARTIN

2 incidents, the OCC managers field that,
3 and let the base leadership know.

4 Q. And does he make any decisions
5 about the flight attendants?

6 A. They'll partner with the base on
7 making decisions.

8 Q. And did he -- did he tell you
9 anything in that conversation?

10 A. No.

11 Q. Did you try to verify the
12 allegations with Joan before contacting
13 him?

14 A. No. We need to speak to her.

15 Q. Sorry, I didn't hear that.

16 A. Can you repeat the question?

17 Q. Did you try to verify the
18 allegations with Joan before calling
19 Mr. Ramos?

20 A. No. We called together.

21 Q. So what was discussed with Joan
22 when you and Mr. Ramos called her?

23 A. The concerns of what we saw at
24 the pool -- or what was seen at the pool,
25 the witnesses and the concerns that were

1 DAVID GILMARTIN

2 A. Sure.

3 Yes, I'm ready.

4 Q. Do you know what this document
5 is?

6 A. This is her statement, Joan
7 Harvey's.

8 Q. Have you seen this before?

9 A. Yes.

10 Q. When did you see this document?

11 A. The day it was written.

12 Q. When was it written?

13 A. October 22nd, 2021.

14 Q. It looks like that's when it was
15 sent from Shannon Kelly to you; is that
16 correct?

17 A. Yes. She also wrote on the
18 bottom of it that day, as well.

19 Q. Right. What's the first
20 sentence of what she wrote in her own
21 handwriting at the bottom?

22 A. I can was not drinking. I was
23 not very service. I was falsely accused
24 of that -- I had -- I had the drink the
25 night before.

1 DAVID GILMARTIN

2 A. No.

3 Q. So how do you know that's not a
4 nonalcoholic beer or cider?

5 MR. FLEMING: Object to form.

6 A. I don't, but she never admitted
7 to saying that when she was with the
8 captain; and she even asked what time she
9 had to stop drinking.

10 Q. Did she tell you that she asked
11 that question?

12 A. No.

13 Q. Who told you that?

14 A. Captain Pete Corrao.

15 Q. So do you know what Malta is?

16 A. No.

17 Q. That's -- if I told you that was
18 also a beverage on the menu, how would you
19 know that that's not a nonalcoholic beer
20 or cider?

21 MR. FLEMING: Object to form.

22 A. Because I spoke to the hotel
23 staff and asked them directly.

24 Q. When did you speak to the hotel
25 staff?

1 DAVID GILMARTIN

2 Q. I'm going to ask you to review
3 this one, as well, and just tell me to
4 scroll down when you get to the bottom.

5 A. Yes.

6 You can go down.

7 Yes, I'm ready. I'm ready.

8 Q. That's the end.

9 Have you seen this document
10 before?

11 A. Yes.

12 Q. Can you tell me what this is?

13 A. This was a recap of the
14 suspension meeting.

15 Q. And who was in that meeting?

16 A. Myself and FMS Shannon Kelly.

17 Q. And were you present in person?

18 A. I was present by phone,
19 virtually.

20 Q. And Miss Kelly was in the room
21 with Joan?

22 A. Yes.

23 Q. Isn't it true that in the
24 suspension meeting Joan again denied
25 drinking beer on that day?

1 DAVID GILMARTIN

2 she got to Atlanta?

3 A. I did. I left her a message.

4 MS. SELIGER: I'm going to stop
5 the share.

6 (Discussion off the record.)

7 (Brief recess taken.)

8 BY MS. SELIGER:

9 Q. Mr. Gilmartin, after the
10 suspension meeting with Miss Harvey, did
11 you conduct any sort of investigation into
12 the truth of whether or not she had been
13 drinking?

14 A. That was all part of the
15 investigation.

16 Q. Did you review any documents
17 other than the statements from Mr. Corrao,
18 Miss Harps, Miss Passman, and Joan Harvey?

19 A. Those were all the parties that
20 were involved.

21 Q. And did you review any other
22 documents other than their statements?

23 A. Besides their statements, just
24 the menu from the hotel.

25 Q. Do you recall reviewing a letter

1 DAVID GILMARTIN

2 A. Yes.

3 Q. When did you make that call to
4 the hotel?

5 A. She asked me to do it -- or she
6 prompted me or asked a question on
7 November 17th, and I replied back on
8 November 17th, so within that timeframe.

9 Q. Was that the first time you had
10 called the hotel?

11 A. I believe so.

12 Q. Do you see where it says that,
13 in same e-mail, they do not serve
14 nonalcoholic cider, only cider with
15 alcohol?

16 A. Yes.

17 Q. Who gave you that information?

18 A. The bartender at the hotel.

19 Q. Do you know what his name was or
20 her name?

21 A. No.

22 Q. Did you document that
23 conversation anywhere?

24 A. Just right here.

25 Q. And the person you spoke to, was

1 DAVID GILMARTIN

2 A. I made the recommendation, and
3 our legal team, our HR team and our Equal
4 Opportunity team supported the decision.

5 Q. And on what basis did you make
6 the decision to recommend termination?

7 A. Witness accounts of her
8 consuming alcohol within eight hours of
9 departure, of report time.

10 Q. And when did you make that
11 decision?

12 A. The decision to suspend her?

13 Q. The decision to terminate or
14 recommend termination.

15 A. The day that we met with her.

16 Q. So you had already determined at
17 the time of her suspension that you were
18 going to recommend her termination?

19 A. We had secured her statement,
20 and then we send in the documentation.
21 But, yes, we suspended her with the plan
22 to review all documents for termination.

23 Q. And is that when you made the
24 decision to recommend her for termination?

25 A. Yes.

1 DAVID GILMARTIN

2 BY MS. SELIGER:

3 Q. Without revealing any contents
4 of any privileged conversations, did you
5 speak with your attorney during the break?

6 A. I did not.

7 Q. Sorry, I can't hear you.

8 A. No.

9 Q. Before the break we were talking
10 about the termination meeting with Miss
11 Harvey.

12 So you said that you
13 participated in this meeting via
14 telephone; is that correct?

15 A. I did, but I'm not remembering
16 this meeting.

17 Q. So are you sure that you were
18 participating in the termination meeting?

19 A. I'm not sure. Because I
20 remember getting the notice that it came
21 through, but I don't remember -- I know a
22 corporate director had to be in it or
23 Andrea Misserian because of her 20-plus
24 years.

25 Q. Whose 20-plus years?